

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO,

Plaintiff,

v.

No. 1:25-cv-00120-SMD-DLM

JOSEPH DAVID PEARNS,

Defendant.

ORDER REMANDING CASE

Defendant was charged in Las Vegas Magistrate Court, San Miguel County, New Mexico, on May 30, 2024, with speeding. *See New Mexico v. Pearn*s, No. M-48-TR-202401200 (<https://caselookup.nmcourts.gov/caselookup/app>) (visited February 5, 2025). Defendant mailed a copy of the citation to the Las Vegas Magistrate Court with a statement referencing “USC Title 18 sec. 241-242” on May 31, 2024. The Las Vegas Magistrate Court issued a summons on June 26, 2024, Defendant moved for a continuance on July 8, 2024, and the Las Vegas Magistrate Court issued a bench warrant on October 30, 2024. Defendant, who is proceeding *pro se*, removed his case in Las Vegas Magistrate Court pursuant to 28 U.S.C. §§ 1441 and 1446. *See* Notice of Removal of Criminal Case from State Court to Federal District Court at 1, Doc. 1, filed February 4, 2025 (“Notice of Removal”).

United States Magistrate Judge Damian L. Martinez notified Defendant:

Section 1441 provides for removal of civil actions; it does not provide for removal of criminal prosecutions. Section 1446 sets forth the general procedure after removal. Section 1455 sets forth the procedure for removal of criminal prosecutions. *See* 28 U.S.C. § 1455. It appears Defendant’s Notice of Removal is untimely. “A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier [, except that for good cause shown the United States district

court may enter an order granting the defendant or defendants leave to file the notice at a later time].” 28 U.S.C. § 1455(b). Defendant states:

The timing of this filing is based on newly discovered evidence that these individuals [public officials] are occupying statutorily vacant offices without qualification.

....

This Notice of Removal is filed based on newly discovered evidence that these individuals are occupying statutorily vacant offices without proper qualification or authority. This new information directly impacts the constitutional issues raised and falls within the exceptions for timely removal.

Notice of Removal at 1, 4. Defendant has not clearly identified the newly discovered evidence, has not stated when he discovered the evidence and has not explained why that evidence was previously unavailable.

Amended¹ Order to Show Cause at 3-4, Doc. 5, filed February 28, 2025. Judge Martinez ordered Defendant to show cause why the Court should not remand this case to the Las Vegas Magistrate Court. *See* Amended Order to Show Cause at 4 (notifying Defendant that failure to timely show cause may result in remand of this case). Defendant did not show cause by the March 21, 2025, deadline.²

IT IS, THEREFORE, ORDERED that this case is **REMANDED** to the Las Vegas Magistrate Court, San Miguel County, New Mexico.


UNITED STATES DISTRICT JUDGE

¹ The Court filed an Order to Cure Deficiency and Order to Show Cause on February 5, 2025. *See* Doc. 3. The Clerk’s Office mailed the Order to Cure Deficiency and Order to Show Cause to Defendant using an incorrect address. The Clerk’s Office subsequently mailed the Order to Cure Deficiency and Order to Show Cause to Defendant using the correct address on February 20, 2025. The Court amended its Order to Cure Deficiency and Order to Show Cause to extend the deadline for complying with the Order to Cure Deficiency and Order to Show Cause to March 21, 2025.

² The Order to Show Cause, Doc. 5, filed February 28, 2025, that the Clerk mailed to Defendant was returned as “Return to Sender, No such number, Unable to forward.” Doc. 6, filed March 17, 2025. *See* D.M.N.LR-Civ. 83.6 (“All attorneys of record and parties appearing pro se have a continuing duty to notify the Clerk, in writing, of any changes in their . . . mailing addresses”).